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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CODY v. NORTON COAL CO.

Nov. 18, 1909.

[66 S. E. 33.]

1. Words and Phrases—"Immediately."—"Immediately," according to Webster, means "at once; without interval of time."

[Ed. Note.—For other definitions, see Words and Phrases, vol. 4, pp. 3403, 3410. 7 Va.-W. Va. Enc. Dig. 299.]

2. Master and Servant (§ 241*)—Injuries to Servant—Contributory Negligence.—The declaration alleged: That plaintiff, a mine employee, purchased from defendant, his employer, a fuse with which to set off a charge of dynamite in defendant's mine; that on being lighted the fuse failed to fuse and smoke in the ordinary way, whereupon plaintiff, supposing that it had gone out, frazzled the end of it and again applied the blaze, and, on its failing to respond, repeated the operation, when an explosion immediately occurred, and plaintiff was injured. Held, that the declaration was demurrable, as plaintiff was unwarranted in assuming that the fuse was defective because it failed to smoke, and that, in remaining by it after first lighting it, he was guilty of contributory negligence precluding his recovery.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 757; Dec. Dig. § 241.* 9 Va.-W. Va. Enc. Dig. 700.]

Error to Circuit Court, Wise County.

Action by Zedekiah Cody against the Norton Coal Company. Judgment for defendant, and plaintiff brings error. Affirmed.

Pennington Bros. and Duncan & Kelly, for plaintiff in error.
Bullitt & Chalkely and *Ayers & Fulton*, for defendant in error.

NORFOLK & W. RY. CO. v. POTTER.

Nov. 18, 1909.

[66 S. E. 34.]

1. Appeal and Error—Jurisdiction—Amount Involved—Set-Off.—Where a claim of set-off amounted to more than \$300, defendant was entitled to bring error from a judgment for plaintiff for \$156.81.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 237, 267; Dec. Dig. § 51.* 1 Va.-W. Va. Enc. Dig. 483.]

2. Appeal and Error (§ 173*)—Filing Pleadings—Set-Off—Objections Not Made at Trial.—Where defendant in open court called attention to its account of set-offs, theretofore left with the clerk with directions to file, and witnesses were examined, and instruction given with respect thereto, and the claim treated by both parties as a part of the record, plaintiff could not object for the first time on a writ of error that the set-off was not in fact in the record, because not marked "Filed" by the clerk.

[Ed. Note.—For other cases, see Appeal and Error Cent. Dig. § 1108; Dec. Dig. § 173.* 1 Va.-W. Va. Enc. Dig. 547.]

3. Carriers (§ 91*)—Withholding Delivery—Conversion.—Plaintiff shipped certain canned tomatoes, which, on being refused by the consignee, plaintiff directed the carrier to return to him. The tomatoes were returned under an "astray waybill," not accompanied by any bill indicating back charges, whereupon defendant's agent refused to deliver the goods to plaintiff until he obtained information as to the amount of such back charges and the same were paid, and, on obtaining such information, the agent notified plaintiff thereof, and tendered the goods to plaintiff on payment of the charges, which plaintiff refused. Held, that the agent's refusal to deliver in the first instance did not constitute a conversion, and hence the carrier was only responsible for loss accruing because of the delay in delivery after the goods were returned.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 339; Dec. Dig. § 91.* 2 Va.-W. Va. Enc. Dig. 681.]

4. Carriers (§ 105*)—Delay in Delivery—Damages.—Where redelivery of the goods to the consignor by a carrier after they had been returned to him was delayed, the shipper's measure of damages was the difference between the market value of the goods when redelivery should have been made and their value at the time redelivery was tendered.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 451; Dec. Dig. § 105.* 2 Va.-W. Va. Enc. Dig. 681.]

Appeal from Circuit Court, Botetourt County.

Action by T. H. Potter against the Norfolk & Western Railway Company. Judgment for plaintiff, and defendant appeals. Reversed.

E. M. Pendleton, M. McCormick, and T. W. Reath, for appellant.

Benj. Haden, for appellee.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.